

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SAMUEL L. DILIBERTO,	:	ORDER
OFFICER OF SAM'S SALOON, INC.	:	DTA NO. 810246
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1988	:	
through May 31, 1989.	:	

Upon petitioner's Notice of Motion for an Order for Determination on Default, dated March 9, 1992, on the basis that the Division of Taxation's Answer was filed more than 60 days after the acknowledgement that Samuel L. DiLiberto's petition was received in proper form, and the Affirmation in Opposition to said motion, it is ordered that:

Petitioner's Motion for an Order for Determination on Default pursuant to 20 NYCRR 3000.4(a)(4) is denied.

The Tax Appeals Tribunal Rules of Practice and Procedure provide at 20 NYCRR 3000.4(a)(1):

"The law bureau shall serve an answer on the petitioner or the petitioner's representative, if any, within 60 days from the date the supervising administrative law judge acknowledged receipt of a petition in proper form."

The petition in this matter was received in the Division of Tax Appeals on November 29, 1991. On December 24, 1991 the Division of Tax Appeals acknowledged receipt of the petition. Pursuant to 20 NYCRR 3000.4(a)(1), the law bureau had until February 22, 1992 (60 days from the date of acknowledgement) to file its Answer. The law bureau filed its Answer on February 21, 1992, one day prior to the expiration of 60 days. There is, therefore, no basis for petitioner's motion.

As to the Division of Taxation's motion to impose a frivolous petition penalty, the misreading, misinterpretation or misunderstanding of a regulation does not rise to such a level

as would allow the imposition of such a penalty.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE